

Decision 03-05-006 May 8, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Breuer, Inc.

Complainant,

vs.

Del Oro Water Company, Inc.

Defendant.

Case 02-05-035
(Filed May 9, 2002)

ORDER EXTENDING STATUTORY DEADLINE

Pub. Util. Code Section 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why the deadline cannot be met and issues an order extending that deadline. In this proceeding, the 12-month deadline for resolving the complaint is May 9, 2003. The complaint by Breuer, Inc. (Breuer) was filed on May 9, 2002, alleging that Defendant Del Oro Water Company, Inc. (Del Oro) breached two water main extension contracts. Defendant Del Oro filed an answer on July 5, 2002, denying the allegations in the complaint, and asserting affirmative defenses. Del Oro also filed three motions: a motion to dismiss the complaint, a motion for summary judgment, and a motion for judgment on the pleadings. Breuer filed a reply to the motions and Del Oro filed a response to Breuer's reply.

Procedural Background

On June 24, 2002, Complainant Breuer filed a petition for automatic reassignment of this case pursuant to Rule 63.2 of the Rules of Practice and Procedure. The case was reassigned to another Administrative Law Judge (ALJ) on July 12, 2002. The reassignment caused a delay of approximately 2 months in the commencement of the process to bring the case to resolution.

A prehearing conference (PHC) was scheduled at the earliest date when parties and their representatives could be present, following reassignment of the case. The Commission tried to schedule the PHC in August or September of 2002, but scheduling conflicts of the parties and their counsel resulted in early October being the earliest date when all parties and representatives were available. The assigned Commissioner and ALJ held a PHC on October 4, 2002. At the PHC the ALJ denied the three motions filed by Del Oro. The ALJ determined that hearings were necessary and a schedule was adopted for the filing of testimony and for evidentiary hearing. The procedural schedule allowed time for the parties to meet and confer regarding possible settlement, and to conduct discovery. Del Oro indicated it intended to take the deposition of a representative of Breuer.

The evidentiary hearing proceeded as scheduled on December 9, 2002. An expedited post-hearing briefing schedule was set. Opening briefs were filed January 6, 2003. The matter was submitted with filing of concurrent reply briefs on January 15, 2003. It is anticipated the Presiding Officer's Decision (POD) will be mailed no sooner than April 2, 2003.

Pub. Util. Code § 1701.2(a) provides that any party may appeal the POD within 30 days of issuance, and the Commission may itself initiate a review of the POD on any grounds. It is possible that the POD will become final and this

proceeding will be completed timely. However, if either party exercises its right to appeal the POD, or if the Commission initiates review of the POD, it may not be possible for the case to be resolved before the expiration of the statutory deadline on May 9, 2003.

Public Review and Comment

Under Rule 77.7(f)(4) of the Commission's Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending deadlines for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable Pub. Util. Code § 1701.2(d) statutory deadline for public review and comment is being waived.

Findings of Fact

1. This proceeding was initiated on May 9, 2002.
2. Based upon the 12-month statutory deadline, this proceeding should be resolved on or before May 9, 2003.
3. On June 24, 2002, Complainant filed a petition for automatic reassignment of this case pursuant to Rule 63.2 of the Rules of Practice and Procedure. The case was reassigned on July 12, 2002.
4. Because of the reassignment, the commencement of the process to bring this case to resolution was delayed by approximately two months.
5. After the case was reassigned, the PHC was set on October 4, 2002, the earliest date on which all parties and representatives could be present.
6. Evidentiary hearings were set for December 9, 2002.
7. Concurrent opening and reply briefs were filed on January 6, 2003, and January 15, 2003. The matter was deemed submitted on January 15, 2003.
8. It is anticipated the POD will be issued no sooner than April 2, 2003.

9. If either party exercises its right to appeal the POD within 30 days of issuance, or if the Commission initiates review of the POD, it may not be possible for the case to be resolved before the expiration of the statutory deadline on May 9, 2003.

Conclusions of Law

The 12-month statutory deadline imposed by Pub. Util. Code § 1701.2(d) should be extended, effective immediately, until further order.

IT IS ORDERED that the 12-month statutory deadline in this proceeding, May 9, 2003, is extended until further order.

This order is effective today.

Dated May 8, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners